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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

In the Matter of	)	**GEN Docket No. 90-314**
	)	**ET Docket No. 92-100**
	)	
Amendment to the Commission's Rules to Establish New Personal Communications Service	)	**RM-7140, RM-7175, RM-7617, RM-7618, RM-7760, RM-7782, RM-7860, RM-7977, RM-7978, RM-7979, RM-7980**
	)	
	)	**PP-35 through PP-40, PP-79 through PP-85**

REPLY COMMENT OF HORIZON CELLULAR GROUP

INTRODUCTION

Horizon Cellular Group,[1] ("Horizon"), pursuant to Section 1.415 of the Commission's Rules (47 C.F.R. 1.415) and the Commission's Notice of Proposed Rulemaking and Tentative Decision ("Notice"), released August 14, 1992, hereby files Reply Comments to ensure that the record in this proceeding reflects its concerns that the rules adopted to govern Personal Communications Services ("PCS") adequately address the significant economic differences between rural and urban areas, and the unique considerations faced by small-market cellular operators in providing wireless communications services. In its reply comments, Horizon seeks to emphasize that, as the Commission has recognized in the past,[2] the characteristics of smaller markets are different from those of metropolitan areas.

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[1] KCCGP, L.P., d/b/a Horizon Cellular Group and its affiliates operate cellular systems in the PA 1, PA 6, PA 10, MD 3, KY 4, and WV 3 RSAs, and have pending applications in the GA 6, KY 5, KY 6, and KY 8 RSAs.

[2] Examples of the Commission's consideration of the unique characteristics of small-market areas include the "rural exemption" to the cable/telco cross-ownership rules, as well as modifications of its technical rules governing cellular radio.

Smaller markets are distinct from metropolitan markets in a number of ways. Specifically, smaller markets for wireless communications, particularly cellular markets, are more fragile economically than the larger MSAs and therefore warrant specific consideration in the PCS rule making process. Smaller cellular markets are not generally capacity-constrained with respect to spectrum. Rather, the most common constraint in such markets is the capital required to implement additional base station (cell sites) in order to expand the geographic territory served. Smaller markets typically possess lower population densities, and lower demand for wireless services, than urban areas. Smaller markets therefore typically do not attract investment activity in the same way as urban areas.

Recognition of these distinctions demonstrates that the FCC should establish a balanced approach which recognizes that, in smaller markets, excessive competition may inhibit investment which would promote universality and speed of deployment in wireless services. However, the public interest is clearly served by encouraging investment in wireless services in these areas, in order to further the Commission's statutory mandate -- to make communications by wire and radio available "to all the people of the United States."[3] Horizon is particularly concerned that the public interest of encouraging investment in smaller markets and the introduction of new services via the cellular frequencies may be unnecessarily and inadvertently contravened by a PCS regulatory framework which is not appropriate for these markets.

[3] 47 U.S.C. § 151.

Therefore, Horizon submits that the Commission should adopt the following five positions in formulating its PCS regulatory framework:

- As considerable uncertainty exists regarding type and demand for PCS services, the Commission should gradually phase in PCS in rural areas, after having garnered experience in larger markets;
- The Commission should initially introduce fewer licenses into smaller markets, and use the experience of urban markets to determine the appropriate number;
- The Commission should adopt a policy of inclusion, with no eligibility exclusions;
- There should not be a spectrum set-aside for any entity, including local exchange carriers (LECs); and
- If the Commission accepts the arguments justifying a LEC set-aside, the same considerations warrant a set-aside for local cellular system operators.

DISCUSSION

I. As considerable uncertainty exists regarding type and demand for PCS services, the Commission should gradually phase in PCS in rural areas, after having garnered experience in larger markets.

The record in this proceeding indicates that significant unknowns exist regarding PCS.[4] Little definitive knowledge exists regarding the type of services that will succeed, and regarding the potential long-term demand for such services. The introduction of new PCS entrants in smaller markets will therefore create uncertainty which would chill investment in these fastest growing of all wireless markets. The reduced investment would likely result in a decrease in both depth and diversity of wireless services available in small-market areas. Such a result is clearly not in the public interest.

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[4] The Commission's proposed definition of PCS is extremely broad and uncertain: "a family of mobile or portable radio communications services which could provide services to individuals and business, and be integrated with variety of competing networks." Notice at 14. The extent of the uncertainty is indicated by a myriad of PCS proposals for a host of services, including PCS and satellite, Comments of Celsat, and PCS and cable, see, e.g. Comments of Cox Cablevision, Inc.

Therefore, the FCC should license PCS in the largest market areas first and then assess the development of PCS in those markets before proceeding to roll out PCS licensing to smaller markets. This process will better promote the continued flow of capital for expansion of wireless services and systems in small-market areas, while at the same time enabling the definition and rapid deployment of PCS. Moreover, the experience gained in the larger markets may give the Commission a better record with which to evaluate the spectrum needs for PCS in rural markets to ensure PCS spectrum allocation is achieved efficiently while permitting healthy competition. Of course, where allocation of licenses is appropriate, the Commission should allocate PCS licenses for all markets on an expeditious basis.

II. The Commission should initially introduce fewer licenses into smaller markets, and use the experience of urban markets to ensure the efficient utilization of spectrum for rural areas.

The determination of the number of licensees in a particular market, and the allocation of spectrum to those licensees, is based on an appropriate balancing of competition with spectrum efficiency.[5] The comments, to some extent, indicate a consensus that the appropriate balance between competition and efficiency for a larger market is best achieved with five equal PCS licensees. However, this same analysis applied to a less densely populated rural market would likely indicate that the optimal balance would not be approached by the simultaneous introduction of five new entrants.[6] Accordingly, the Commission should initially introduce fewer licenses into smaller markets, and use the

[5] Notice at 16, para. 36

[6] Common sense indicates that, while the population of the New York City metropolitan market may support five PCS licensees, the typical rural community of 75,000 or less can not support five simultaneous PCS start-ups.

experience of urban markets to ensure the efficient utilization of spectrum for rural areas.

III. The Commission should adopt a policy of inclusion, with no eligibility exclusions.

Horizon supports the arguments of other commentators which demonstrate that existing cellular operators should not be excluded from obtaining PCS licenses, either in their current cellular markets or elsewhere.[7] The public policy goal of introducing new services quickly and efficiently would not be served by barring market entry by some of the most experienced, innovative wireless competitors, especially in small market areas where cellular competitors have demonstrated a commitment to providing service.

IV. There should not be a spectrum set-aside for any entity, including the local exchange carriers.

There should not be a set-aside of PCS licenses for any entities, including the local exchange carriers. Because service applications of PCS are potentially unlimited (and as yet largely undefined), an allocation of spectrum to foster the provision of service by one particular type of entity is unwarranted. Moreover, a LEC set-aside would be contrary to the Commission's articulated policy of promoting competition in local exchange service.[8]

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[7] See, e.g., Comments of Cellular Communications, Inc., at 15, Comments of CTIA at 60-67, Comments of McCaw at 24-31, Comments of GTE at 39.

[8] See Notice at 30 (PCS is likely to be a potential competitor to local wireline exchange service); see also In the Matter of Expanded Interconnection with Local Telephone Company Facilities, CC Docket 91-141, October 16, 1992, at 2-3; In the Matter of Transport Rate Structure and Pricing, CC Docket 91-213, October 16, 1992, at 4.

V. If the Commission accepts the arguments justifying a LEC set-aside, the same considerations warrant a set-aside for local cellular system operators

Should the FCC accept and adopt the arguments for a LEC set-aside, local cellular system operators should also receive such a set-aside. Commentators have argued that a set-aside for local exchange carriers is in the public interest based on the unique characteristics of local exchange carriers, specifically, the fact that they possess economies of scope and scale in the provision of communications services, and a commitment to providing service in rural areas.[9] These economies of scope, achieved through established business investment and experience, apply equally to local exchange carriers and cellular providers. Moreover, nowhere is a commitment to providing service to rural areas more evident than in the case of a non-wireline cellular operator making significant capital investments to bring service to a small-market area independent of any other local operation. It would be arbitrary and capricious to find that identical criteria justify a set-aside for one type of entity, but not another. Therefore, if the Commission accepts the arguments for a set-aside for rural LECs, an equivalent set-aside is appropriate for rural cellular operators.

CONCLUSION

For the foregoing reasons, Horizon believes that the Commission must take cognizance of the unique economic characteristics and investment climate of small-market service areas. Horizon urges the

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[9] See, e.g., Comments of NTCA at, Comments of Clear Creek Mutual Telephone Company, et al., at 6; see also Notice at 31 (efficiency gains from economies of scope in cellular are limited because of structural safeguards imposed on the BOCs - these limitations are not present where the cellular entity is a small-market operator); Comments of CTIA at 67 (describing efficiencies derived from the joint provision of cellular and PCS).

Commission to establish a balanced approach in its PCS rules which considers that inappropriate PCS allocation can undermine the Commission's goals as they are now being served in small wireless markets. Horizon asks the Commission to exercise caution with respect to possible disruptions and damages to nascent and developing small-market wireless operators and their services.

Therefore, Horizon recommends that the FCC gradually phase in the licensing of rural areas, using the experience gained from larger markets to formulate appropriate rules for smaller markets. Similarly, Horizon recommends that the Commission recognize that smaller markets cannot support the same number of simultaneous new entrants as can New York City or Los Angeles. Horizon recommends that the Commission promote a policy of inclusion, and not provide for exclusions of particular types of entities. Horizon recommends that the Commission not award any type of set-aside to any entity, including local exchange carriers. However, should the FCC conclude that any set-aside for local exchange carriers is warranted, a similar set-aside is equally justified for rural cellular operators.

Respectfully submitted,

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